

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE**

-----X
NICE SYSTEMS, INC. :
NICE SYSTEMS LTD. : C.A. No.: 1:06-CV-00311 (JJF)
Plaintiffs, :
v. :
WITNESS SYSTEMS, INC. :
Defendant. :
-----X

PROPOSED RULE 16 SCHEDULING ORDER

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties have exchanged the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2.

2. **Joinder of other Parties.** All motions to join other parties shall be filed on or before January 3, 2007.

3. **Discovery.**

(a) Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by March 2, 2007.

(b) Maximum of 50 interrogatories, including contention interrogatories, for each side.

(c) Maximum of 20 requests for admission by each side.

(d) Maximum of 25 depositions by all plaintiffs and by 25 defendant, excluding expert depositions. Depositions shall not commence until the discovery required by Paragraph 3(a, b and c) is completed. Fact discovery will be completed on or before May 30, 2007.

(e) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the party having the burden of proof by August 24, 2007. Reply reports are due by September 24, 2007.

(f) Any party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report, unless otherwise agreed in writing by the parties or ordered by the Court.

4. Discovery Disputes.

(a) A party seeking discovery which the opposing party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages and must specify that the filing is pursuant to the Discovery Dispute procedures provided in this paragraph. An Answer to the Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the party's position on the issue(s), and the reasons for the party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by e-mail at jjf_civil@ded.uscourts.gov that the dispute is ready for decision.

(d) Upon receipt of the movant's e-mail, the Court will determine whether a conference is necessary and advise the parties accordingly.

(e) There is no limit on the number of Rule 37 motions a party may file, unless otherwise ordered by the Court.

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before February 7, 2007.

6. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before November 2, 2007. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court. The Court will issue a separate Order regarding procedures for filing summary judgment motions.

7. **Markman.**

A Markman hearing will be held on June __, 2007. Briefing on the claim construction issues shall be completed at least ten (10) business days prior to the hearing. The Court, after reviewing the briefing, will allocate time to the parties for the hearing.

If the Court is amenable, the parties propose a schedule for claim construction and related briefing prior to the Markman hearing:

The parties shall, on or before March 9, 2007, exchange a list of those claim term(s)/phrase(s) that they believe need construction. The parties shall exchange proposed constructions for terms in dispute on or before March 30, 2007. These exchanges shall not be filed with the Court. Subsequent to making the exchanges, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted to the Court. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) at issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) at issue and those portions of the intrinsic record and/or and extrinsic

evidence relied upon are to be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument. The Joint Claim Construction Chart shall be submitted to the Court on April 18, 2007. Issues of claim construction shall be submitted to the Court by each party filing an opening brief on May 4, 2007, and a responsive brief on June 6, 2007.

8. Applications by Motion.

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

9. **Pretrial Conference and Trial.** The pretrial conference will take place on December _____, 2007. Trial is scheduled to begin on January _____, 2008 and last _ days.

DATE

UNITED STATES DISTRICT JUDGE

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October 26, 2006

BY CM/ECF

The Honorable Joseph J. Farnan, Jr.
United States District Court, District of Delaware
844 North King Street
Wilmington, DE 19801

Re: NICE Systems, Inc. and NICE Systems Ltd. v. Witness Systems, Inc.
C.A. No. 06-311-JJF

Dear Judge Farnan:

I write on behalf of my clients, plaintiffs NICE Systems, Inc. and NICE Systems, Ltd. (collectively "NICE") and on behalf of defendant, Witness Systems, Inc. ("Witness"), represented by William Marsden, Esquire, to transmit the proposed scheduling order and set forth our respective requests on three open items. We do so pursuant to our conversation with Ms. Debbie Krett.

Counsel have agreed that, if Your Honor's calendar permits, the Markman Hearing (paragraph 7) should be scheduled after June 20 and before the end of June and are available on any of those dates. The proposed time frame would set the hearing after the close of fact discovery (May 30, 2007, paragraph 3(d)) and approximately 60 days before the service of initial expert reports by the party having the burden of proof (August 24, 2007, paragraph 3(e)). In connection with the deadline set forth in paragraph 3(a), the parties acknowledge that a non-party's compliance with discovery requests is not within the requesting party's control. As a result, where a party has timely commenced and diligently sought discovery from a third party as early as feasible in the discovery process, the parties recognize that third party document collection under such circumstances may extend beyond the document completion date of

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The Honorable Joseph J. Farnan, Jr.

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paragraph 3(a). This possibility will not delay the commencement of depositions, paragraph 3(d).

Consistent with Your Honor's determination at the October 12, 2006 scheduling conference that trial will be held in January or February 2008, the parties request that the trial begin on January 21, 2008. NICE requests a five day trial and Witness requests a ten day trial (or longer if tried issues are not narrowed).

With respect to the date for the pretrial conference, we understand that December 6, 2007 is the date on which pretrial conferences for trials in January 2008 would ordinarily be held and confirm the availability of all counsel on that date.

We further understand that Your Honor will supply the three foregoing dates. Obviously counsel are available at the call of the Court for any questions.

Respectfully,

/s/ Melanie K. Sharp

Melanie K. Sharp (Bar ID No. 2501)

MKS:ch

cc: William J. Marsden Jr., Esquire (by hand)